

JUDGE SEIBEL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
PAUL PESCE,
on behalf of himself and all others similarly situated,

08 CIV. 9584

CLASS ACTION COMPLAINT

Plaintiff,
-against-

ASSET ACCEPTANCE LLC

Defendant.
-----x

Plaintiff, by and through his undersigned attorney, alleges upon knowledge as to himself and his own acts, and as to all other matters upon information and belief, brings this complaint against the above-named defendant and in support thereof alleges the following:

PRELIMINARY STATEMENT

1. Plaintiff brings this action on his own behalf and on behalf of all others similarly situated for damages and declaratory and injunctive relief arising from the defendant's violation of §1692 *et seq.* of Title 15 of the United States Code, the Fair Debt Collections Practices Act (hereinafter "FDCPA"), which prohibits debt collectors from engaging in abusive, deceptive and unfair practices.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331. This is an action for violation of 15 U.S.C. § 1692.

3. Venue is proper in this district under 28 U.S.C. § 1391(b)(2).

PARTIES

4. Plaintiff Paul Pesce (hereinafter "Pesce") is a resident of the State of New York, Orange County. On or about February 7, 2008, plaintiff received a debt collection notice from defendant Asset Acceptance LLC.

5. Defendant Asset Acceptance, LLC is a collection agency engaged in the business of collecting debts with its principal place of business located in Delaware. Defendant regularly attempts to collect debts alleged to be due another. Its Registered Agent is the CT Corporation System, 111 Eighth Avenue, Floor 13, New York, NY 10011.

CLASS ACTION ALLEGATIONS

6. Plaintiff brings this action as a nationwide class action, pursuant to Rule 23 of the Federal Rules of Civil Procedure (hereinafter "FRCP"), on behalf of himself and all consumers who have received debt collection notices and/or letters from the defendant which are in violation of the FDCPA, as of the date of plaintiff's complaint, and their successors in interest (the "Class"). Excluded from the Class is the defendant herein, and any person, firm, trust, corporation, or other entity related to or affiliated with the defendant, including, without limitation, persons who are officers, directors, employees, associates or partners of Asset Acceptance, LLC.

7. This action is properly maintained as a class action. This Class satisfies all the requirements of Rule 23 for maintaining a class action.

8. The Class is so numerous that joinder of all members is impracticable. Upon information and belief, hundreds of persons have received debt collection notices from the defendant which violate various provisions of the FDCPA.

9. There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual Class member. These common questions of law and fact include, without limitation:

a. Whether the defendant violated various provisions of the FDCPA, including but not limited to 15 U.S.C. §§ 1692g, 1692g(a)(4) and 1692g(b).

b. Whether plaintiff and the Class have been injured by the defendant's conduct;

c. Whether plaintiff and the Class have sustained damages and are entitled to restitution as a result of defendant's wrongdoing and, if so, what is the proper measure and appropriate statutory formula to be applied in determining such damages and restitution; and

d. Whether plaintiff and the Class are entitled to declaratory and/or injunctive relief.

10. Plaintiff's claims are typical of the claims of the Class, and plaintiff has no interests adverse or antagonistic to the interests of other members of the Class.

11. Plaintiff will fairly and adequately protect the interests of the Class and has retained experienced counsel, competent in the prosecution of class action litigation.

12. A class action is superior to other methods for the fair and efficient adjudication of the claims herein asserted. Plaintiff anticipates that no unusual difficulties are likely to be encountered in the management of this class action.

13. A class action will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would engender. Class treatment also will permit the adjudication of relatively small claims by many Class members who could not otherwise afford to seek legal redress for the wrongs complained of herein. Absent a class action the Class members will continue to suffer losses of statutorily protected rights as well as monetary damages and if defendant's conduct will proceed without remedy it will continue to reap and retain the proceeds of its ill-gotten gains.

14. Defendant has acted on grounds generally applicable to the entire Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

STATEMENT OF FACTS

15. On or about February 7, 2008, the defendant did send to the plaintiff a collection letter. Copy of said letter is annexed hereto as **Exhibit A**.

16. On February 25, 2008, plaintiff disputed the validity of the debt and requested verification that Asset Acceptance purchased the account at issue and requested the address of the Original creditor. **Exhibit B**.

17. Defendant requested payment of the debt prior to providing verification that it purchased the debt and prior to providing the address of the Original Creditor.

Exhibit C.

18. Defendant attempts to collect its own debts while it is unable and/or unwilling to evidence that it is the present creditor and unable and/or unwilling to identify the address of the Original Creditor.

19. As a result of defendant's abusive, deceptive and unfair debt collection practices, plaintiff has been damaged.

FIRST CAUSE OF ACTION
(Violations of the FDCPA)

20. Each of the above allegations is incorporated herein.

21. Defendant's debt collection letter violated various provisions of the FDCPA, including but not limited to 15 U.S.C. §§ 1692g, 1692g(a)(4) and 1692b(b) by attempting to collect disputed debts it can neither verify nor evidence.

22. As a result of defendant's violations of the FDCPA, plaintiff has been damaged and is entitled to statutory damages, costs and attorney's fees.

WHEREFORE, plaintiff respectfully requests that the Court enter judgment as follows:

- a) Declaring that this action is properly maintainable as a class action and certifying plaintiff as Class representative;
- b) Awarding plaintiff statutory damages;
- c) Awarding class members the maximum statutory damages.
- d) Awarding plaintiff costs of this action, including reasonable attorneys' fees and expenses; and
- e) Awarding plaintiff such other and further relief as the Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38 of the FRCP, plaintiff hereby demands a trial by jury.

Dated: November 5, 2008
Uniondale, New York



Abraham Kleinman (AK-6300)
KLEINMAN LLC
626 RexCorp Plaza
Uniondale, New York 11556-0165
Telephone (516) 522-2621
Facsimile (888) 522-1692

EXHIBIT A

Asset Acceptance LLC

New York City License No. 1255250

February 7, 2008

RE:

First Notice

ORIGINAL ACCT#: 7021271287410242
 ASSET ACCEPTANCE LLC ACCT#: 36293440
 BALANCE PAST DUE: \$2738.89

Dear PAUL PESCE:

It is our pleasure to welcome you as a new customer of Asset Acceptance LLC. Your account with the above mentioned creditor has been purchased and is now owned by Asset Acceptance LLC. In order to insure proper credit for any payments it is necessary that all future payments and inquiries be made to:

ASSET ACCEPTANCE LLC
 PO Box 2036
 Warren, MI 48090-2036

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice, this office will: obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request this office in writing within 30 days after receiving this notice, this office will provide you with the name and address of the original creditor, if different from the current creditor.

This is an attempt to collect a debt and any information obtained will be used for that purpose.

Sincerely,

MARIO CAJAS – Phone: Toll Free 800-525-8022 Ext. 3703
 Debt Collector
 Asset Acceptance LLC

We may report information about your account to credit bureaus.

See Reverse Side for Important Information Regarding Your Privacy Rights.

IONASSE018100AA(CTX)

Detach Lower Portion and Return with Payment

Asset Acceptance LLC Account #: 36293440
 Balance Past Due: \$2738.89



PO Box 2039
 Warren MI 48090-2039

ADDRESS SERVICE REQUESTED

February 7, 2008

ASSET ACCEPTANCE LLC
 PO Box 2036
 Warren MI 48090-2036

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#BWNJRJH
 #0000000362934408# 0320787 0069183 36293440-8100

██

PAUL PESCE
 58 Elise Ter
 Middletown NY 10941-3364

EXHIBIT B

**PAUL PESCE
58 ELISE TER
MIDLETOWN, NEW YORK 10941-3364**

February 25, 2008

Asset Acceptance LLC
PO Box 2036
Warren, MI 48090-2036

Re:

**BEST BUY HSBC ORIGINAL ACCOUNT NUMBER: 7021271287410242
ASSET ACCEPTANCE LLC ACCOUNT NUMBER: 36293440
DIPUTED BALANCE DUE: \$2738.89**

Dear Asset Acceptance:

1. I dispute the statement that Asset Acceptance LLC purchased this Best Buy HSBC debt.
2. Please send me *verification* that Asset Acceptance LLC purchased *and now owns* this Best Buy HSBC debt.
3. Please send me *verification* of this disputed debt.
4. Please send me the *name* of the Original creditor.
5. Please send me the *address* of the Original creditor.

Thank You,



Paul Pesce

EXHIBIT C

Asset Acceptance LLC

P.O. BOX 2036
WARREN, MI 48090-2036
Telephone: 800-525-8022

February 28, 2008

ASSET ACCEPTANCE LLC Account Number: 36293440

DEBT VALIDATION

PRIOR/ORIGINAL CREDITOR:
/BEST BUY HSBC

ORIGINAL ACCOUNT NUMBER:
7021271287410242

NAME	PRINCIPAL	INTEREST/FEES	BALANCE
PAUL PESCE	\$2609.35	\$129.54	\$2738.89

LAST TRANSACTION DATE

03/06/06

PERSONAL INFORMATION

Address City/St/Zip	58 ELISE DR MIDDLETOWN NY 10941	Social Security #	XXX-XX-9655
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For Personal Assistance Call

MARIO CAJAS Toll-Free 800-525-8022 Ext. 3703

Please make payments to:
ASSET ACCEPTANCE LLC
PO Box 2036
Warren, MI 48090

Please include account number on your payment.

THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY OTHER INFORMATION
OBTAINED WILL BE USED FOR THAT PURPOSE.

Asset Acceptance LLC

Toll Free 800-525-8022 Ext. 3703
LOCAL: 210-979-3600

LOCAL OFFICE: SAN ANTONIO, TX

New York City License No. 1255250

February 28, 2008

RE : ASSET ACCEPTANCE LLC ACCT # 36293440
BEST BUY HSBC Account # 7021271287410242

Dear PAUL PESCE:

Thank you for your request for further validation of your above mentioned account.

Enclosed please find an account statement prepared with information provided to us by the prior creditor.

Please contact me so that we can work toward resolving this matter.

— This is an attempt to collect a debt and any information obtained will be used for that purpose.

— Sincerely,

MARIO CAJAS- Phone: Toll Free 800-525-8022 Ext. 3703
Debt Collector
ASSET ACCEPTANCE LLC



P.O. BOX 2039
WARREN, MI 48090-2039

Address Service Requested

36293440-7060-MJS6

|||||
#BWNJRHK
#000000362934408#
PAUL PESCE
58 ELISE DR
MIDDLETOWN NY 10941-3364

|||||
ASSET ACCEPTANCE LLC
P.O. BOX 2036
WARREN, MI 48090-2036

Vonage

Welcome - Raquel Pesce
Account Number: *****
User Name: *****
Account Name: Raquel
Pesce
Account Status: Active

[Dashboard](#) [Activity](#) [Billing](#) [Voicemail](#) [Account](#) [Orders](#) [Features](#) [Add-ons](#)

[Dashboard](#) [FAQs](#)

[Help](#) [Contact](#) [Log Out](#)

Recent calling activity for phone number:

Received Calls

Date	Time	From	Type	Duration (hh:mm:ss)
Oct 20, 2008	02:49 PM	 18666431422		00:01:00